UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

AURSCANT HUGHEY,

       Plaintiff,

                              CASE NO. 09-CV-11372

      v.

                              HON. GEORGE CARAM STEEH

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF MICHIGAN,

       Defendant.

_____/

ORDER ACCEPTING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION AND DISMISSING PLAINTIFF'S PETITION (#3)

Plaintiff, Aurscant Hughey, currently a Michigan prison inmate, brought a petition

for mandamus relating to his 1987 Michigan state conviction for an arson-related

offense. Plaintiff bases this court's jurisdiction on 28 U.S.C. § 1361, the federal

mandamus statute. This mandamus statute confers jurisdiction on the federal court to

"compel an officer or employee of the United States or any agency thereof to perform a

duty owed to the plaintiff."

The Magistrate Judge issued a report and recommendation recommending that

plaintiff's petition be dismissed for failure to state a claim and for want of jurisdiction.

Plaintiff filed timely objections to the report and recommendation, in which he states that

he is seeking records from a 1970 state conviction, which apparently formed the basis

for him being convicted as a habitual criminal in 1987. The Magistrate Judge

considered this argument, and found that plaintiff has not identified a basis under which

the federal district court owes him a non-discretionary duty of any kind with regard to

providing documentation of a state conviction. This court has considered plaintiff's

objections, and agrees with the Magistrate Judge's recommendation.

IT IS HEREBY ORDERED THAT this matter is DISMISSED for failure to state a

claim on which relief may be granted pursuant to 28 U.S.C. § 1915(e)(2) and for lack of

subject matter jurisdiction pursuant to Fed. R. Civ. Proc. 12(b)(1).

SO ORDERED.

Dated: November 30, 2009

                                                        S/George Caram Steeh
                                                         GEORGE CARAM STEEH
                                                         UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on
November 30, 2009, by electronic and/or ordinary mail.

S/Josephine Chaffee
Deputy Clerk